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10/660,519	09/12/2003	Louis Borgeat	16046-1US-3 IC/DP/mft	5323

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CANADA

EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/660,519

Applicant(s)

BORGEAT, LOUIS

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/12/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 26-44 been renumbered 1-19.

### *Election/Restrictions*

2. Claims 13-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/18/2004.

### *Drawings*

3. The drawings are objected to because the depression in the base holder base outer surface is not labeled with a reference number (claimed in claim 11), but is designated generally with an already used no. 60 (base outer surface in Fig. 4). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "depression in said holder base outer surface below said semi-circular groove" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement

sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The disclosure is objected to because of the following informalities:

There is no discussion of the depression (which is denoted by no. 60 [already being used to designate the base outer surface in Fig. 4]) located below the semi-circular groove (70) as recited in claim 11.

Appropriate correction is required.

### ***Claim Objections***

6. Claims 2-6, 10-12 are objected to because of the following informalities:

Claim 2, line 2, "close" should be changed to "closed".

Claim 2, lines 4, 5, 8, and 9, "transversal" should be changed to "transverse".

Claim 4, line 2, Claim 2, line 2, "close" should be changed to "closed".

Claim 6, line 2, "transversal" should be changed to "transverse".

Claim 12, line 2, "an" should be inserted before "inferior".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claim 11, a "depression in said holder base outer surface below said semi-circular groove" was not disclosed in the figures or specification.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-12, 18, 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the term "means adapted to removably engage said holder base on said fisherman garment appears to be claiming the same structure as the previously occurring term of "means for mounting said waist holder on said garment". The term "means adapted to fixedly engage said reel seat holding device" also appears to contradict the previously recited "means for mounting said reel seat holding device on said waist holder".

In regard to claim 2, line 3, the terms "the lateral side" and "said insertion opening" lack positive antecedent basis. With regard to "said insertion opening", the term "at least one insertion opening" was previously set forth.

In regard to claim 6, the term "the part of said transversal portion close to said open distal end" lacks positive antecedent basis. Also, the longitudinal and transversal portions were set forth in claim 2 as "being respectively contiguous" and therefore this term renders the claim vague and indefinite. Also the phrase "creating a hook shape" renders the claim vague and indefinite and should be rewritten as "having a hook shape".

In regard to claim 8, the term "the inner surface of said holder base" lacks positive antecedent basis.

In regard to claim 9, the term "the outer surface of said waist holder" lacks positive antecedent basis.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 9, 12, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Clewes et al. 5,992,717.

Clewes et al. discloses a reel seat holding device comprising a case (32; reel seat holding device not being particularly claimed); a waist holder (12) and means for mounting the reel seat holding device on the waist holder (28, 30, 34, 36); means for mounting the waist holder on the garment (24, 26); the waist holder comprising a holder base (12), means adapted to removably engage the holder base on the garment (24, 26) comprising a slot running along an inferior surface of the holder base (on a surface below the upper edge 14); and means adapted to fixedly engage the reel seat holding device (28, 30); a line positioning means provided on said reel seat holding device (end of 32 is capable of positioning the line as recited).

13. Claims 1, 2, 6, 8, 9, 12, 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bell 2,995,855.

Bell discloses a reel seat holding device comprising a case being a hollow cylinder (13) with a closed proximal end (at 12) and an open distal end (at 13a) and at least one insertion opening (20-22) with longitudinal (20) and transverse portions (21, 22); a waist holder (11) and means for mounting the reel seat holding device on the waist holder (12, 14); means for mounting the waist holder on the garment (27); the waist holder comprising a holder base (12), means adapted to removably engage the holder base on the garment (24, 26) comprising a slot running along an inferior surface of the holder base (on a surface below the upper edge of 11); and means adapted to fixedly engage the reel seat holding device (14); a line positioning means provided on said reel seat holding device (end of 13 is capable of positioning the line as recited).



***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 3, 6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clewes et al. 5,992,717 in view of Bell 2,995,855.

Clewes et al. does not disclose at least one insertion opening in the lateral side of the cylinder having transverse and longitudinal portions. Bell discloses at least one insertion opening (20-22) in the lateral side having transverse (21, 22) and longitudinal (20) portions wherein a reel post (26) of a spinning reel serves to interlock the rod (23) with the wall of the receiver (13). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the at least one insertion opening with transverse and longitudinal portions in the lateral side of the cylinder of Clewes et al. in order provide means for locking the rod and reel relative to a portion of the cylinder so as to prevent inadvertent displacement of the rod from the cylinder in a longitudinal direction.

16. Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clewes et al. 5,992,717 in view of Bell 2,995,855 as applied to claim 2 above, and further in view of Schwanke 2,598,021 or Young 2,452,279.

Clewes et al. and Bell do not disclose resilient means disposed inside the cylinder at the closed proximal end which is compressed when inserting the reel and

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reel seat assembly inside the reel seat holding device. Schwanke and Young each disclose resilient means (14 OR 8) disposed inside the cylinder at the closed proximal end (11 OR 1) which is compressed when inserting the reel and reel seat assembly inside the reel seat holding device. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the resilient means of Schwanke or Young in the closed end of the cylinder of Clewes et al. and Bell in order to provide means for biasing the rod in the cylinder against a transverse portion to prevent lateral movement of the rod from the desired position inside the cylinder.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clewes et al. 5,992,717 in view of Bell 2,995,855 as applied to claim 2 above, and further in view of Gattuso et al. 5,632,427.

Alternatively, Clewes et al. and Bell do not disclose the transverse portion creating a hook shape. Gattuso et al. discloses a transverse portion (14, 16) close to an open distal end (8) forming a hook shape (J-shape). It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to employ the transverse portion with a hook shape of Gattuso et al. in the cylinder of Clewes et al. and Bell in order to provide a transverse portion which makes it more difficult for the rod and reel to enter to longitudinal portion and become displaced from the cylinder under longitudinally directed forces.

18. Claims 7, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clewes et al. 5,992,717.

In regard to claim 7, Clewes et al. discloses the holder base made of a flexible material, but does not disclose the holder base made of plastic or wood. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holder base out of plastic or wood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because plastic and wood are readily available materials that can be made into many different configurations and sizes. *In re Leshin*, 125 USPQ 416.

In regard to claim 18, Clewes et al. discloses the mounting means comprising fasteners (34, 36) and keyholes (28, 30), but does not disclose the mounting means comprising nuts and bolts. It would have been an obvious matter of design choice to employ nuts and bolts as the mounting means since applicant has not stated that by doing so produces any unexpected results or is critical to the design and because nuts and bolts would give a reliable connection between the reel holding means and the waist holder while also providing the capability of removably connecting the reel holding means to the waist holder to allow the device to be broken down.

19. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clewes et al. 5,992,717 in view of Bishop 5,511,336.

Clewes et al. does not disclose the inner surface of the holder base with a concave shape. Bishop discloses the inner surface of a holder base (12") with a concave shape (see Fig. 10). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the holder base of Clewes et al. such that

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its inner surface has a concave shape in view of Bishop in order to provide a holder base which conforms to the curved forms of a user's body so that the holder base neatly fits against the user's body to aid in comfort and stability of the device.

20. Claims 3, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell 2,995,855.

Bell does not disclose the cylinder made of plastic or metal or the holder base made of plastic or wood. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cylinder out of plastic or metal and the holder base out of plastic or wood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because plastic, metal, and wood are readily available materials that can be made into many different configurations and sizes and can also withstand rough handling during use. *In re Leshin*, 125 USPQ 416.

#### ***Allowable Subject Matter***

21. Claim 10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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**Conclusion**

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Allord 5,992,814 and Fast 5,105,574 each disclose slots (see Fig. 2 of each) which receive a waistband or belt of the user from a location which is below the slots.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA